IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 2ND JANUARY 2007 / 12TH POUSHA, 1928

WP(C).No. 3897 of 2005(L)

AGAINST THE ORDER DATED 05 /01 / 2005 IN EP 44 2003 IN OS.1496/1998 of I ADDL.M.C.,TRIVANDRUM

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PETITIONERS:

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1. P.SUJAN, KIZHAKKONATHU PUTHEN VEEDU, POOZHIKUNNU, NEMOM VILLAGE, THIRUVANANTHAPURAM.

2. P.SUDEVAN, DO. DO.

BY ADV. SRI.J.HARIKUMAR
SRI.HARIKUMAR.S.

RESPONDENT:

J.KRISHNANKUTTY, PANAGOTTUVILA VEEDU, KUNDAMONKADAVU, THIRUVANANTHAPURAM.

BY ADV. SRI.V.SURESH
SRI.G.SUDHEER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS'EXHIBITS

EXT.P1: TRUE COPY OF JUDGMENT DATED 10.8.01 IN O.S.1496/98.

EXT.P2: TRUE COPY OF DECREE DATED 10.8.01 IN O.S.1496/98.

EXT.P3: TRUE COPY OF COMMISSIONER'S REPORT DATED 7.9.04 FILED BY COMMISSIONER.

EXT.P4: TRUE COPY OF PLAN.

EXT.P5: TRUE COPY OF RE-SURVEY PLAN.

EXT.P6: TRUE COPY OF OBJECTION DATED 1.10.05 FILED BY PETITIONERS'E HEREIN TO THE COMMISSIONER'S REPORT.

EXT.P7: TRUE COPY OF ORDER DATED 5.1.05 IN E.P.44/03 OF FIRST ADDL. MUNSIFF COURT, THIRUVANANTHAPURAM.

/TRUE COPY/

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C)NO.3897 OF 2005

DATED THIS THE 2nd DAY OF JANUARY, 2007

JUDGMENT

Petitioners are the judgment debtors and respondent the decree holder. As per Ext.P2 decree, Court fixed the boundaries of the property of the decree holder and judgment debtors as marked in Ext.P5 survey plan, which is Ext.A6/B2 marked in the judgment. Respondent filed E.P.44/03 for execution of the decree by putting up the boundary in accordance with the decree. At the instance of respondent, a Commissioner was appointed. Commissioner submitted Ext.C1 to C3 reports and plan. As per Ext.P7 order, learned Munisff permitted respondent to construct a compound wall along the BCDEFGH line shown in Ext.C3 plan, in spite of the objection raised by petitioner with regard to the correctness of the plan. This petition is filed under Article 227 of Constitution of India challenging Ext.P7 order.

2. Learned Counsel appearing for petitioners and respondents were heard.

3. The property of the decree holder is in Survey No.729/7 and that of the judgment debtors in Survey No.729/6. The property of

judgment debtors is lying on the west of the property of the decree holder. The boundary line separating the properties is the survey boundary as marked in Ext.P5 plan. Learned Munsiff granted the decree accepting Ext.P5 plan. Executing Court is not competent to go behind the decree or to refix the boundary, which has been finalised under the decree on the basis of Ext.P5 plan.

4. On hearing learned Counsel appearing for petitioners and respondent, it is clear that the dispute is with regard to the correctness of the plan prepared by the Commissioner. When the southern boundary of the property of respondent shown in Ext.P5 resurvey plan is having a length of 22.4 meters, as per Ext.P4 plan prepared by the Commissioner it is having length of only 20.4 meters. According to learned Counsel appearing for respondent, inclusive of two meters which is the southern boundary of the plot AUVW, the total length is 22.4 meters and therefore it is the correct boundary. According to learned Counsel appearing for judgment debtors, the Commissioner has omitted the eastern three meters, which forms the southern boundary of the property of the decree holder and that is why the mistake has occurred in Ext.P4 plan accepted by learned Munsiff. Infact there was no necessity to prepare a plan at the execution stage, when the Court has granted the decree with reference to Ext.P5 resurvey plan. Executing Court is to see that the boundaries are constructed through the eastern

boundary of the property of the judgment debtors, which is the western boundary of the property of the decree holder as demarcated in Ext.P5 plan. Ext.P7 order is therefore quashed. Learned Munsiff is directed to permit the decree holder to construct the western boundary of his property through the boundary line marked in Ext.P5 resurvey plan. Executing Court shall direct the Taluk Surveyor to be present at the time of construction of the compound wall so as to identify the line as shown in Ext.P5 plan.

M.SASIDHARAN NAMBIAR,JUDGE

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